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REIMAGINING FEDERALISM IN INDIA: EXPLORING THE FRONTIERS OF COLLABORATIVE FEDERAL ARCHITECTURE

Dr. Chanchal Kumar Sharma*

Abstract

This paper argues that in response to contemporary challenges, the federal governance structure in India requires fine-tuning. A directional shift is required *from a cooperative model to a collaborative model* of federal governance in view of various endogenous and exogenous imperatives of change, such as rising assertiveness of civil society; rising “self awareness” of regional and local political elites; globalization, privatization and retreat of the central state; and increasing reliance of the national government on intergovernmental coordination mechanisms rather than centralized/hierarchical mechanisms for policy making and implementation. Thus, we reflect on the possibility of supplementing federal practice in India (known for being “federal in form and unitary in spirit”) with collaborative institutions and deliberative processes to achieve policy coordination. Institutional reforms are required to generate the right incentives for welfare enhancing, multi-stakeholder engagement. Three suggestions offered include: expansion of the existing structural and functional horizons of the Inter-State Council (ISC) to engage, inter alia, non-state actors, enabling it to function as a “collaborative council”; offer constitutional status to the newly formed NITI Aayog to prevent it from being marred by ad-hocism; and transfer the financial allocation function to a permanent Finance Commission.

Keywords: India, federalism, collaborative federalism, cooperative federalism, intergovernmental interactions, coordination mechanisms, NDC (National Development Council), ISC (Inter-State Council), collaborative council.

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INTRODUCTION

The federal environment in India is evolving in exciting ways. A surge in the urge of non-government stakeholders for more engagement in the policy process is clearly conspicuous. In fact, the national, sub-national, and non-state actors always form a seamless web and the need to treat them as such is urgent in this time of enormous transformations in Indian economy, polity, and society. We can no longer allow national-regional boundary to confound our understanding of Indian federalism.

There is a need to evolve such institutional mechanisms that will not only align resources, competencies and capabilities of the governments at all levels but also engage civil society, non-governmental organizations (NGOs) and the private sector in the policy making process. This paper demonstrates why the collaborative federal architecture could be a unique artifact of the present era and how it could be installed and institutionalized so that it receives acknowledgement as a virtue to be universally cherished rather than a moral utopia to be feared and avoided.

This paper emphasizes the need to go beyond the concept of cooperative federalism. We suggest non-centralization of the political process and collaborative engagement of the appropriate levels and actors in the policy making process.

Our scholarly argument is weaved around the notion of collaborative federalism, which owes its intellectual origin to the view that the essence of federalism lies in a society itself (Livingston, 1956, pp. 1–2). The view that Federalism is a process¹ rather than a design (Friedrich, 1964) and a way of bringing people together through practical arrangements (Watts, 1994, p. 7), further strengthens the case for collaborative genre of federalism.

International experience suggests that federalism is not a rigid structure but an ever-evolving science of flexible, complex, and dynamic intergovernmental interactions. In fact, federations tend to evolve as ongoing contracts; and remain, by their very nature, under constant renegotiation (Grewal & Sheehan, 2003). However, actors tend to behave opportunistically under uncertainty (O.E. Williamson, 1985). Thus, in order to realize the potential gains from incompleteness of the intergovernmental contracts, considerable emphasis has to be laid on achieving coordination among the partners of a federation (Hart, 1988; Seabright, 1996; Oliver E. Williamson, 1996). Such coordination can be achieved through

¹ The institutional mechanisms for federal governance are contingent and susceptible to revision. A nation's federal structure cannot be built upon a 'fixed' distribution of authority between governments, because "there is and can be no final solution to the allocation of financial resources in a federal system. There can only be adjustments and reallocations in the light of changing conditions" (Wheare, 1963, p. 117). Thus, Rodden describes federalism as "a process, structured by a set of institutions, through which authority is distributed and redistributed" (Rodden, 2006, p. 31).

collaborative federal architecture. However, to minimize coordination costs² we need to build institutions, which can specify and enforce rules.

SCOPE AND LIMITATIONS

This qualitative case study about India aims to collect evidence and provide a comprehensive perception of intergovernmental coordination mechanisms and the need for change. The research scope is limited to the domains relevant to the ‘interactive’ dimension of the country’s federal system. Although our case study’s descriptive details can increase the understanding of this federal phenomenon, especially in the context of the shifts in both ‘policy environment’ and nature of intergovernmental interactions, we do not establish any causal relationship between the two variables. We intend to offer rich, significant insights into the changing operating environment for federal and multilevel governance in India and then make recommendations to develop its collaborative federal structure.

RESEARCH QUESTIONS AND METHODOLOGY

The study is based on the theories of cooperative, competitive and collaborative federalism and their application in the Indian context. The research benefits from informal interviews with professionals, practitioners, elected representatives, bureaucrats, academics, industrialists and civil society representatives.

The set of questions that inform our inquiry are: How is the prevailing ‘policy environment’ changing with respect to *public policies associated with intergovernmental interactions* in India? Has it posed challenges that require reforms in governance paradigms and structures?

With these questions in mind, we report qualitative evidence to support our proposition that in the changing policy environment, the national government is demonstrating its willingness and preparedness to engage all stakeholders, including those whose perspectives on specific policies are mutually conflicting at the most fundamental level. In other words, we look for proofs to indicate that policymakers and practitioners are acknowledging the emerging perspectives (on intergovernmental interactions) that might differ significantly from existing norms and forms of interactions.

² Note that the New Institutional Economics [NIE] emphasizes coordination between the parties for realization of the potential gains from transactions between them. However, transactions involve costs. These costs are of two types:

THEORETICAL FRAMEWORK

The theoretical framework that has guided the present work combines executive, cooperative and competitive models into a collaborative approach to federal governance. The framework is based on four dominant theories of federalism and three fundamental assumptions. The four dominant theories of federalism relevant for the purpose of this research are (a) executive, (b) cooperative, (c) competitive and (d) collaborative.

At the risk of oversimplifying, we identify two models of intergovernmental relations as characterising much of the politics of Indian federalism since its independence, viz., executive and cooperative federalism. A more recent arrival on the landscape, especially since the beginning of economic reforms, is the phenomenon of competition among states for FDI, without a model for competitive federalism. Finally, the approach-in-waiting (or perhaps ‘in the making’, as we argue) is the collaborative approach to intergovernmental conduct. Based on a survey of the literature, broad conclusions/tenets can be culled regarding each model as an ideal type.

The **model of executive federalism** combines parliamentary government with federalism (e.g., in Canada and India). The fusion of executive and legislative powers in the parliamentary system means that the intergovernmental process occurs at the executive level. It is based on the top-down, hierarchical power relationship between the national and subnational governments. This model has its pros and cons. The term *executive* is used to highlight the lack of any meaningful role of legislatures or participation by citizens or civic organisations. In this system, government officials negotiate behind closed doors, thereby strengthening secrecy at the cost of accountability.

However, under the assumption of the pragmatic and flexible approach of government actors, this type of federalism can deliver results by making it easy for the national government to tackle interregional disparities, achieve a level of national equality in basic public service delivery and social welfare and facilitate the movement of people in the country.

The **cooperative model** is characterised by cooperative arrangements among the *levels of government*. This type of federalism is often characterised by ‘forced cooperation’ (e.g., the cooperative federalism of the Congress-dominant era in India). Under this model, the national government places its superior resources at the disposal of state and local governments for management of national priorities. All levels work within an intricate framework of cooperative relationships while the national government plays the role of leader and facilitator.

Cooperative federalism can tilt towards the coercive type if the higher level of government coerces the lower level to action in the name of the national interest or welfare of the citizens. It can lean towards uncooperative federalism if lower levels resist national intervention and assert autonomy.

Theoretically, the cooperative framework preserves the structural integrity of each level of government while enabling them to exercise their autonomous powers ‘in a cooperative manner’. However, what remains behind the veil is the ‘assumption’ that states are cooperative servants and allies of the federal government. The hierarchical relation as envisaged in executive federalism persists because the task of states is not to assert autonomy but to carry out federal programmes and implement federal mandates. Any assertion of autonomous policymaking makes them outsiders and challengers, giving rise to the so-called uncooperative federalism.

The **competitive model** is based on the public choice perspective, which presumes that the government is a self-interested, Leviathan-like entity. Thus, decentralisation must be designed to disarm the huge central government of its monopolistic power to extract economic rent for itself; in its place, intergovernmental competition and local governmental accountability to constituents should be promoted. Generally, some forms of competition among units exist in all nations (e.g., to attract labour and capital). However, the competitive model of federalism (in a strict sense) will come to its own only if the following principles are at work:

- (a) *Subsidiarity*. Higher levels should undertake only those governance tasks that lower levels cannot manage.
- (b) *Fiscal equivalence*. Each government level must generate its own resources to finance its own tasks.
- (c) *Exclusivity*. There should be an exclusive assignment of tasks to specific levels (no duplication).
- (d) *Rule of origin*. There should be no impediments to free trade throughout the country.

The competition can take the form of a race to the bottom or to the top. When an appropriate policy framework exists to prevent tax wars and subsidy wars (welfare-deteriorating competition), the competition can be manifested in the form of enhanced policy innovation, greater responsiveness, superior infrastructure and improved public service delivery at a reasonable tax price (welfare-enhancing competition). When a jurisdiction introduces a policy innovation and achieves desirable outcomes, its experiment is copied by others, a phenomenon called **laboratory federalism**.

The **collaborative model** is based on four premises:

- (a) A relationship based on partnership and relative parity exists between the national and subnational governments rather than a hierarchical type.
- (b) Responsibilities and interdependence among government levels significantly overlap, which calls for joint decision making and collective action.
- (c) Transparency and accountability towards people can be improved through deeper engagement of civil society, non-governmental organisations (NGOs) and other actors/stakeholders in intergovernmental policy deliberations.
- (d) Solutions to intractable problems can be worked out through learning and innovation in the complex and dynamic world of intergovernmental interactions.

The collaborative model combines the *advantages of cooperative*³ and *competitive federalism* while keeping at bay their limitations stemming from venturing exclusively and excessively into either domain. This model also steers clear of the difficulties caused by the presence of either a strong central government or a suboptimally high level of local autonomy. ‘Repeated interactions’ are the key to the effectiveness of collaborative federalism.

The three fundamental assumptions of our framework are as follows:

- (a) The modern state includes not only multilevel governments but also various non-governmental actors, such as interest groups, civic groups and professional associations. Thus, a multiple partnership arrangement is required as a platform for communication among governments, NGOs, professionals and the public.
- (b) Various ‘forms’ of federalism can easily coexist in a particular federation.
- (c) Key tenets of the collaborative approach to federalism have the potential to address many puzzling dilemmas of the current policy environment.

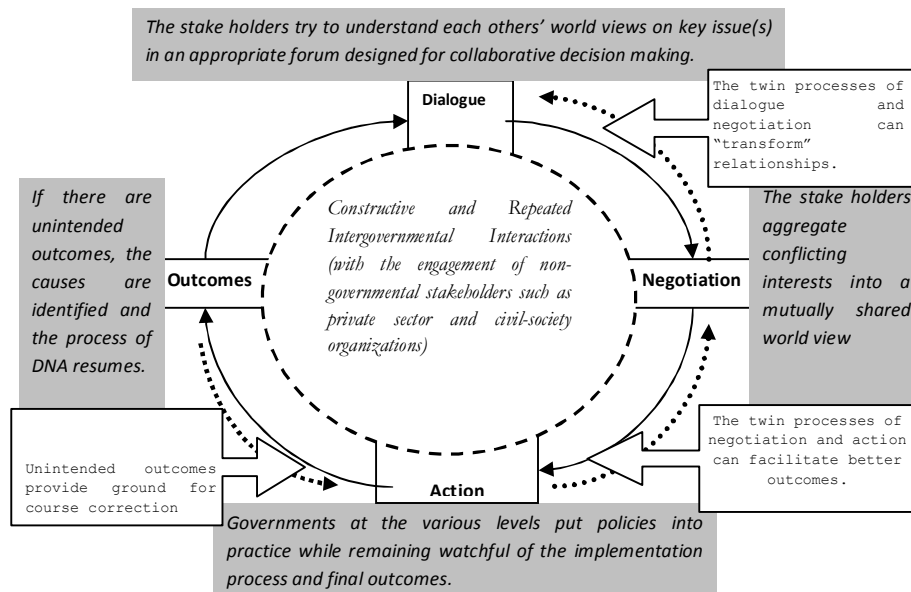
Sharma (2010) demonstrated how the process of continuous interaction might work (Figure 1). Note that even a theoretically sound policy would require streamlining, considering that ground realities would emerge only during the implementation phase. This possibility can be realised if there are elaborate mechanisms for continued interactions, during both the ‘policymaking’ and implementation stages.

Such mechanisms are required because policy success is *not* a linear process, moving from formulation to implementation, where implementation will take care of itself if the formulated design is robust

³ Collaborative and cooperative federalism both represent interdependent relations and are concerned with the management of these interdependencies. The difference is that cooperative federalism manages interdependencies within a framework of hierarchical relations, whereas collaborative federalism entails joint management of interdependencies on a non-hierarchical basis. Furthermore, the collaborative model advances to a direct engagement with non-state stakeholders in a collective decision-making process as equal partners.

enough. Policy success requires an environment where the experience generated during implementation immediately enters into the interactive network (with no time lag) and is applied to streamline the policy.

Figure 1: The Dialogue-Negotiation-Action (DNA) approach



Source: Sharma (2010)

II. COORDINATION THROUGH EXECUTIVE-COOPERATIVE MODEL OF FEDERALISM: AN EXPERIMENT THAT FAILED

Human interactions are at the core of inter governmental relations. Therefore, certain institutional mechanisms are required to facilitate interactions among stakeholders in order to achieve policy coordination. These are called “coordination mechanisms”. Indian federalism, so far, has relied on two major intergovernmental forums, viz., National Development Council and Inter-State Council. These forums facilitate interactions *among the executives* of the two orders of government.

(A) THE NATIONAL DEVELOPMENT COUNCIL (NDC): FROM SUPER CABINET TO RUBBER STAMP

The NDC was set up as an extra-constitutional and non-statutory body by a cabinet resolution of 6 August 1952. It has been listed as an advisory body whose recommendations are not binding. It is composed of the Prime Minister [as Chairman], all Union Cabinet Ministers, Chief Ministers of all

States, Chief Ministers/administrators of all Union Territories and the Members of the Planning Commission. Secretary to the Planning Commission acts as Secretary to the N.D.C.

The NDC is an apex forum not only for the approval of the Five Year Plans but also for achieving policy coordination on the matters of national significance. However, the status of the NDC is largely a function of the politics of a particular period. For instance, during the Nehru era it emerged as a body superior to the Planning Commission. From 1952-63, the NDC meetings were convened with a frequency of 1.66 per year. The redefined terms of reference of the NDC issued on 7 October 1967 stated that NDC should meet at least twice every year. However, the trend took a turn for the worse during Indira Gandhi's 15 years rule as the frequency of the NDC meeting got reduced to 0.80 per year.

Mrs Gandhi's tendency to restructure state legislative elite from above ensured that Chief Ministers of the Congress ruled states were too weak to do anything more than toeing the line of the Union government in NDC meetings. On the other hand, the opposition Chief Ministers began registering their concerns because everything was largely decided by the union government and the NDC's approval was secured as a matter of formality.

Thus, the NDC, which during the Nehru era had a high profile status (K. Santhanam called it a 'super cabinet') came to be described during the Indira era as a mere 'rubber stamp'. It thus failed to do justice to its key task of periodical evaluation of the national planning. This trend further intensified during Rajiv Gandhi's rule as he increased the coercive control over his own party governments at the State level. The frequency of the NDC meetings was further reduced to 0.60 per year during his period.

As the NDC could never pick up as an instrument of intergovernmental coordination, its ritualistic role as a rubber stamp seems to have become its default position, so much so that even after the breakdown of the Congress party's dominance and rise of minority/ coalition governments in the post 1989 period, there has been no improvement in the quality [less politicized interactions] of the NDC meeting.

Though the frequency of meetings has registered a marginal increase as compared to the all time low frequency obtained during the Rajiv Gandhi era (from 0.6 per year during Rajiv Gandhi's rule to an average of 0.73 meetings per year during 1989-2012) yet the frequency remains lower than the required rate of 2 per year. Lack of substantial improvement in frequency even in the era of regionalization of Indian politics and the party system is indeed a puzzle. According to Rekha Saxena this could be due to the regional parties' direct access in the Union cabinet (Saxena, 2002). Providing an interesting nuance to the argument, we argue that the lack of reactivation of the Council is an indication that the State parties which can influence the central government's decisions by virtue of their being partners in the ruling coalition are reluctant to stand for the 'State governments' as a whole. This demonstrates the *scandalous inability* of the states to forget political differences and pose a united front.

The first Administrative Reforms Commission, constituted on 5th January 1966, in its 13th Report recommended replacement of the NDC with an Inter-State Council which should be established under Article 263 [b] and [c] of the Constitution. However, the Sarkaria Commission (1983-87) recommended that the separate identity of the NDC should be maintained and it should be entrenched under article 263 and renamed as National Economic and Development Council.

(B) INTER-STATE COUNCIL (ISC): UNREALIZED POTENTIAL

The Constitution of India empowers the President of India to establish a constitutional body for inquiring into and advising upon inter-state disputes under Art 263 (a) and for achieving better coordination of policy and action, under Articles 263 (b) and (c), regarding subjects of common interest to some or all of the States, or the Union and one or more of the States. The Administrative Reforms Commission, 1969 in its 13th report recommended the setting up of Inter-State Council under article 263 (b) and (c) of the Constitution without invoking the provisions of article 263 (a) which intended to give quasi-judicial powers to the council, complementing the Supreme Court's jurisdiction under Article 131.

The Sarkaria Commission (1983-87) endorsed the view and further recommended that the ISC should be constitutionally entrenched as a permanent and independent national forum for consultation and renamed as Inter Governmental Council. Government accepted the recommendation *sans* change of the name and notified the establishment of the Inter-State Council as a recommendatory body vide Presidential Order dated 28.5.1990. The Inter-State Council Secretariat, headed by a Secretary to the Government of India, was set up in 1991.

Note that the Sarkaria Commission did not support the Administrative Reforms Commission's view that the Inter-State Council should be constituted as a single standing body to which all issues of national importance can be referred. Thus, the issues of inter-State and Centre-State coordination and cooperation continue to be discussed in an ad hoc and fragmented manner in NDC, ISC and a multitude of meetings on specific themes and sectors.

The Punchhi Commission on Centre-State Relations (2007-10) recommended functional independence and quasi-judicial status for the Council. It also recommended that ISC should be made a vibrant negotiating forum for policy development and conflict resolution. Once this outcome is achieved, the Government may consider the functions for the National Development also being transferred to the ISC.

There is no provision to make it mandatory for the council to hold its meetings on a regular basis with a constitutionally specified frequency. Thus, the Inter-State Council has met for only ten times so far. The Punchhi Commission has recommended that ISC must meet at least thrice in a year on an agenda evolved after proper consultation with States.

The Inter-State Council is the only permanent constitutional body created for inter-State coordination. It has a high potential to strengthen vertical and horizontal cooperation in Indian Federalism. However, this potential remains untapped. During 10 years of UPA rule, the ISC had only two meetings.

III. IDENTIFYING THE NEED TO MOVE FROM COOPERATION TO COLLABORATION

The federal relations are explained by the levels of development of the bargaining powers of various stake holders [who can affect the stability of the federal order]. This section demonstrates that exogenous and endogenous changes have brought about a profound change in the relative bargaining powers of the stakeholders, the normative culture of Indian federation and its paramount value system.

(A) THEORETICAL IMPERATIVES

According to Talcott Parsons (1961), systemic strains can be relieved by being fully resolved, by being isolated or arrested, or by changing the structure itself. India, in the present context, can relieve the strains falling on intergovernmental relations by undertaking institutional reforms to facilitate a collaborative federal architecture which puts a premium on face to face deliberation among the stakeholders in order to transcend intractable disputes.

The Nobel laureate Thomas Schelling (1956) noted that if the parties take a long perspective and do in fact 'interact repeatedly', their common interests may be sufficiently strong to sustain cooperation. In fact, Schelling went further and stated that people can structure their relationships, by extending interaction over time, in such a way so as to reduce the incentive to behave opportunistically at each point in time. Fourçans and Thierry (2001) show in their game theoretic model that 'infinite interactions' prevent strategic behaviours like 'race to the bottom'.

In this context the insights from the literature on 'policy networks'— an idea rooted in political science literature on intergovernmental relations can be useful in modeling vertical and horizontal interactions and linkage mechanisms among the stakeholders (Rhodes, 1999). Policy networks can facilitate 'infinite interactions', thereby revealing interdependencies and inducing collaborative behaviour.

Sustained interactions among the stakeholders can produce desirable outcomes by revealing to them their shared long-term interests. A well-guided rationale can even reveal to more affluent SNGs that it is

in their long-term interest to make voluntary transfers to their financially unstable counterparts. Myers (1990), for instance, demonstrated that such contributions can benefit rich SNGs' economies by discouraging inefficient regional migration.

Indeed, as the dividing lines between the public and the private are getting blurred, the government at all the levels – central, regional and local – is increasingly becoming a co-producer of policies together with the private sector and other non-governmental stakeholders. Thus, the collaborative policy networks will provide opportunities to the hitherto “less important” stakeholders for meaningful participation.

(B) EXOGENOUS IMPERATIVES FOR COLLABORATIVE FEDERALISM

(I) GLOBALIZATION

Globalization has created a space for the subnational governments to play a more pronounced role in economic policy decisions. However, strict enforcement of rules to prevent race to the bottom among various state governments of India is required. Collaborative architecture can make the state governments realize the shortcomings of the race to the bottom and can rather induce them to compete for the race to the top, for example by providing better infrastructure such as power and roads.

Further, the forces of globalization, privatization, liberalization along with Information technology revolution and knowledge revolution are making the diverse and pluricultural society of India even more complex and interdependent. In such an environment of increasing complexity and interdependency, the contentious policy issues cannot be resolved by the governments alone, following a top down approach. Thus, the challenge for governments is to engage stakeholders, communities and citizens in the process of production of policies and work with them during the process of implementation.

(II) LOCALIZATION

The contemporary global economic and political conditions are compelling central governments to look forward to more engagement of local levels in the process of economic development. Localization is considered as true decentralization (Fenwick, 2010). Localization is being documented by the development practitioners and decentralization experts as a key to local economic development. Thus, an attempt is being made to build local capacity through collaboration between federal government and local governments (Davidson, 2007). Indeed, in the emerging borderless world economy the national

governments have realized that they are no longer managing a single national economy but a series of distinct local economies (Magnusson, 1996).

(III) CONTEMPORARY GOVERNANCE PARADIGM

The contemporary governance paradigm gives due recognition to all the players relevant for governance. This includes local bodies, various non-governmental organisations, civil society groups, trade unions, private sector and subnational business associations. Indeed, “Governing”, as Andrew Gamble observes, “is not an exclusive preserve of government; there are other agencies and institutions that are involved in governing a social order” (Gamble, 2000). Thus, the emerging federalism literature explores the role of central government in the context of multi-level, multi-actor transactions [See Table-1].

Table 1: Governance Structure—20th Versus 21st century

20th Century	21st Century
▪ Unitary	▪ Federal/Confederal
▪ Centralized	▪ Globalized and Localized
▪ Center manages	▪ Center leads
▪ Bureaucratic	▪ Participatory
▪ Command and Control	▪ Responsive and accountable to citizens
▪ Input controls	▪ Results matter
▪ Top down accountability	▪ Bottom up accountability
▪ Internally dependent	▪ Competitive
▪ Closed and slow	▪ Open and Quick
▪ Intolerance of risk	▪ Freedom to fail/succeed

Source: (Shah, 2004, p. 4)

(C) ENDOGENOUS IMPERATIVES FOR COLLABORATIVE FEDERALISM

Since the impact of exogenous sources of change is felt only through the endogenous tendencies to change (Parsons, 1961), it is appropriate to highlight the endogenous imperatives. Four key imperatives are detailed below.

[I] PARADIGM SHIFT IN ECONOMIC POLICY MAKING SINCE 1991

In the 1960s, 70s through 80s, socialism and command economy model enjoyed discursive dominance. In the 1990s, all political parties came to accept the logic of liberalization policies as the state

interventionism and Nehruvian socialism came to be squarely blamed for India's BOP crisis (Sharma, 2011).

With this began India's engagement with the re-formulation of ground rules. The new economic policies have led to significant "decentering" in the centre-state economic relations (Gent, 2003). However, the intensification of the already existing regional disparities (Ahluwalia, 2000) calls for a more elaborate equalization programme implying fiscal centralization. Similarly, the need to impose greater fiscal discipline on the states to maintain macroeconomic stability also implies fiscal centralization. The golden mean between the two tendencies requires greater dialogue, negotiation and interaction among the stakeholders (Sharma, 2010).

In fact, a more collaborative method of fiscal restructuring will ensure that conditionalities imposed by the central government to curb fiscal profligacy and mismanagement do not result in compression of expenditure on essential public services like health and education especially on the part of the poor states (see Rao & Chakraborty, 2006).

[II] POWERFUL PRESENCE OF STATE PARTIES IN NATIONAL LEGISLATURE SINCE 1996

The emergence of state based parties and their success in elections to the national legislature (Figure 2) facilitated transition towards a multiparty coalition system (1999-2014). With this transition towards 'binodal system'⁴ a term coined by Prem Shankar Jha (1999), and its highly competitive nature as demonstrated by Arora (2003), the coordination of beliefs and strategies of the political officials at the two levels became more problematic than ever before. This happened because the parties seeking to form a governing coalition at the centre necessarily had to bargain with the regional parties. This dramatically increased the bargaining powers of the latter during 1999-2014 (Figure 3). In fact, during this period, the subnational officials began to seek greater policy independence from the center. The political leaders at the center followed their Rikerian incentives and created more policy independence and authority for subnational officials in exchange for their support at the national level.

This form of bargaining may not be required under the currently ruling Modi Government (2014-19). However, it is incumbent upon the present government to derive lessons from the past and take the lead

⁴ Prem Shankar Jha coined the term 'binodal' to portray emergence of stable coalitions around the BJP and the Congress.

in building self-enforcing institutional design for intergovernmental coordination and collaboration. Only such an approach can ensure long term safeguard because the return of a federally fractured electoral verdict cannot be ruled out.

[III] DIMINISHING RELEVANCE OF SARKARIA STYLE EXECUTIVE-COOPERATIVE MODEL

For more than four decades (1947-89) cooperative federalism in India simply meant lack of resistance by the states to the programmes and policies of the central government. This view was a product of the world-view in which regional interests were seen as antithetical to the national interest.⁵

The operating environment of Indian federalism today stands in sharp contrast to one that prevailed during the four decades of Indian independence. It may be noted that the framing fathers of the constitution envisioned a leadership role for the central government in relation to the state governments – both in terms of setting national priorities and providing financial support. In fact, the “Executive-Cooperative model” upheld by the *Sarkaria Commission* reiterated the paramountcy of the Centre to co-ordinate policy and action between the Union and the States.

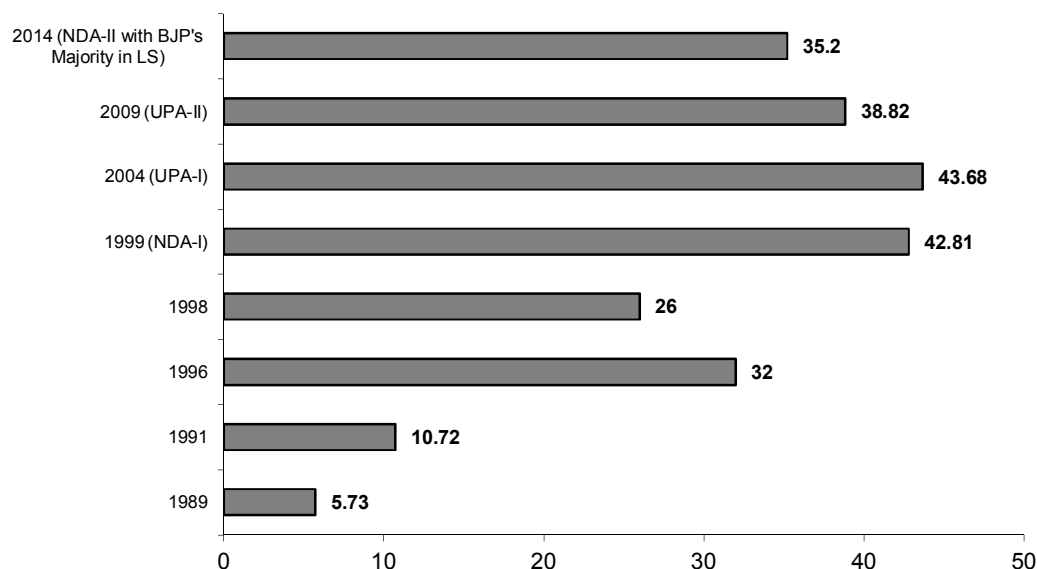
However, during the period of the regionalized multi-party coalition system (1999-2014), the State parties emerged as the key beneficiaries of the bargaining federalism. The notion of ‘competent centre and incompetent states’ became the relic of a bygone era. In view of recent economic and political transformations, the states are much less likely to accept central influence and leadership. Rather, it is the centre which is more likely to acknowledge and appreciate the states’ role in the national policy making. This calls for a fresh look at the way we understand the federal organisation in India. Not surprisingly, the *second Commission on Centre-State Relations* headed by Justice [retd] M M Punchhi has espoused the “collaborative governance model” as an innovative way of implementing public policies. The collaborative federalism is a concept based on a profound value system which embraces non-centralization as a key feature of the federal organization.

[III] CONSTITUTIONAL RECOGNITION OF LOCAL BODIES

The constitutional recognition of the third tier by 73rd and 74th Amendments has added a new dimension to the centre-state-local relations. This has provided a legitimate ground for the participation of local governments in the national policy process, independent from the states. Thus, the view of local government identity as one of fundamental powerlessness is gradually becoming more of a relic.

⁵ The advent of the coalition era (1999-2014) diluted this view, but it still exists. Thus, the opposition to the national policy stance by a particular state (for example, West Bengal’s stand on Teesta River and Tamil Nadu’s stand on Sri Lanka) is seen as an attempt to ignore larger interest of the nation as a whole

Figure 2: State parties as % of National Parties in Lok Sabha (number of seats) 1989-2014



Source: Data from—Statistical Report on General Elections, Various Years, Election Commission of India, New Delhi.

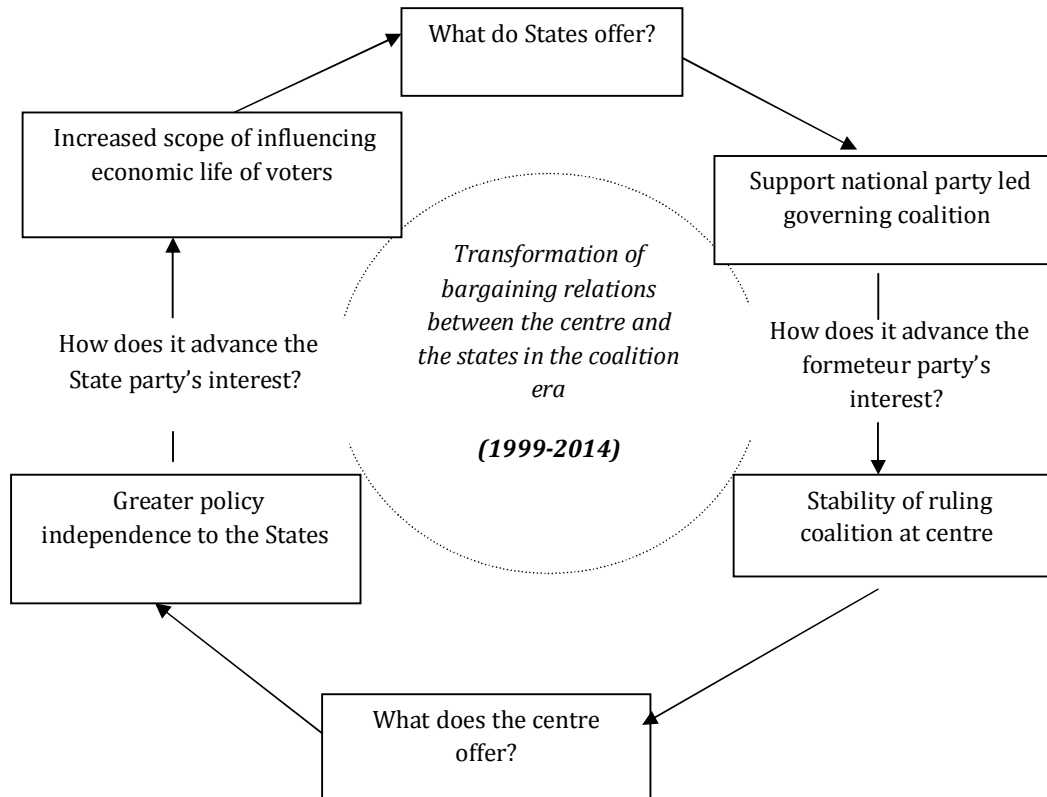
[IV] WIDENING NEGOTIATING SPACE OF NON GOVERNMENT ACTORS

The unprecedented rise in the political mobilization of the marginalized groups, increased self-assertiveness of the non-governmental organizations and civil society and the rising reliance of the government on the private sector through public-private partnership has thrown up new challenges. In response to the noticeable negotiating space acquired by these actors, the governments at the centre, state and local level have begun to streamline their interactions with one another and with the newly emerged players. Thus, institutional reforms have become indispensable to respond to these challenges. The civil society in India has achieved many legislative milestones. Organized as well as unorganized non-state entities have played instrumental role in pushing through several recent laws and bills such as Right to Information Act, Right to Education Act, Mahatma Gandhi National Rural Employment Guarantee Act, Right to Food Bill and Communal Violence Bill.

On 9 April 2011 the Union government went on to set up a 10-member joint panel of ministers and civil society activists to draft an effective Lokpal Bill. The Bill received assent from the President of India on 1 January 2014 and came into force (as Lokpal Act 2013) from 16 January 2014.

The government of India provides grants of more than Rs. 1000 crores (Rs 10 billion) every year to voluntary organizations for their *partnership role* with government to implement public policies and ensure effective delivery of public services.

Figure 3: Bargaining relations in the era of coalition (1999-2014)



IV. IDENTIFYING THE PREPAREDNESS FOR EMBRACING THE CULTURE OF COLLABORATION

The emerging politics of the centre-state relations in India demonstrates that the centre is now allowing state governments to take independent decisions and action in their own jurisdiction. The centre's willingness to compromise is noticeable in case of central government's interactions with the state governments, private sector, NGOs and civil society organizations. Recent actions of the national government relating to public policy have signalled its appreciation of the role of subnational levels [state and local] as well as non-governmental stakeholders in the policy making process.

[I] GRANTING FREEDOM TO THE STATES TO DIFFER AND DISAGREE WITH UNION GOVERNMENT'S DECISIONS

The Union Government (during the closing years of UPA-II) clearly demonstrated its appreciation of the evolving federal political climate and showed no intention to force the states to implement the Union Cabinet's decisions. For instance, in order to resolve intergovernmental disagreement over the government's controversial policy decision to allow 51 per cent Foreign Direct Investment [FDI] in the

multi-brand retail sector, the then central government (UPA-II) decided to let the individual states make the final decision. West Bengal, Uttar Pradesh, Tamil Nadu, Bihar, Orissa, Madhya Pradesh, Gujarat, Himachal Pradesh and Kerala decided not to implement the decision. On the other hand Punjab, Haryana, Maharashtra, Andhra Pradesh, Rajasthan, Assam and Delhi welcomed the policy decision. A similar approach to tackling contentious policy issues was witnessed during the implementation of *fiscal responsibility and budget management Act*, 2003 when all the States were invited to sign Memorandum of Understanding to avail fiscal reform facility without any undue pressure. In a similar move, the central government decided not to force the central law related to ‘Land Acquisition, Rehabilitation & Resettlement’ [LARR] on the States. The central government allowed the States to frame their own land acquisition laws.

[II] SEEKING CONSENT OF THE STATES FOR NATIONAL POLICY PRIORITIES

The UPA regime demonstrated its commitment to obtain the States’ consent before introducing indirect tax reforms [VAT/GST]. This feature allows for the implementation of national policy priorities while protecting jurisdictional autonomy.

The centre and states, in their January 2013 meeting in Bhubaneswar, finally resolved some of the major roadblocks to an early rollout of Goods and Services Tax (GST). On one hand, the centre has budgeted Rs 9,000 crore to be released for compensation to the states for losses related to the reduction in the CST rate. On the other, states have reached a consensus on implementing a “dual GST” with following features:

- There will be a floor and ceiling rate for GST instead of a single rate for GST. This will give some freedom to fix state-specific rates.
- Majority, and not consensus, will be the basis of decisions in the GST Council.
- The proposal to set up a Disputes Settlement Authority will be dropped.

[III] DECENTRALIZED MONITORING OF CENTRALIZED SOCIAL SECTOR SCHEMES

In order to ensure that outlays for social sector schemes such as MANREGA [the UPA government’s expensive flagship programme] translate into the intended outcomes, monitoring has to be an important part of centre-state relations. However, instead of adopting a heavy handed approach, the UPA government allowed monitoring to be done by Private CAs, Panchayats, and local communities. The experience of social audits from the state of Andhra Pradesh has produced outstanding results. It is

important to note that while audit by the CAG [Comptroller and Auditor General] is also a part of monitoring scheme, the audit jurisdiction of CAG with respect to PRI (Panchayati Raj Institutions) and ULB (Urban Local Bodies) is quite limited because audit of local self governance institutions is a State subject.

[IV] DECENTRALIZATION OF SOCIAL SECTOR SCHEMES (PROPOSED)

Any policy framework that increases distance between the decision-maker and those affected by the decision may lead to unintended outcomes. In the view of poor outcomes and unintended consequences of implementing social sector schemes (central government's flagship schemes), the UPA-II government had begun contemplating decentralization of these schemes to the States. The new BJP led NDA-II government has also announced its intention to end centrally sponsored schemes and discretionary payments to states. The Fourteenth Finance Commission has also recommended that those centrally-sponsored schemes which relate to subjects that can best be handled by the states must find place in the fiscal space of states alone. It will greatly help the cause by increasing the stake of the States in the proper implementation of such schemes and allow state-specific solutions to emerge.

[V] INTERACTIONS WITH THE STATE GOVERNMENTS, LOCAL BODIES, CSO, NGOs AND PRIVATE SECTOR TO PREPARE APPROACH PAPER TO 12TH FIVE YEAR PLAN

The consultative process adopted by the Union Government in preparing the Approach Paper to the 12th Five Year Plan, was a telling demonstration of its urge to duly recognise the rising relevance of other actors apart from the State governments, such as, urban and rural local bodies and the non-governmental actors such as civil society groups, non-government organisations, trade unions, state-level business associations.

[VI] STATE-LEVEL EXPORT COMMISSIONS IN PLACE OF CENTRALIZED EXPORT PROMOTION COUNCILS

The new BJP led government has initiated the process to dismantle defective centralized export promotion councils currently being operated by the Department of Commerce, where a few and limited representatives from exporting community hijack the benefits of the schemes to themselves without spreading the benefits far and wide. The government will set up state-level export commissions to facilitate and promote exports. With state-level export commissions, states can also encourage their manufacturing companies and export units.

[VII] CENTRE'S ACQUIESCENCE IN STATE GOVERNMENTS ATTEMPT TO AMEND ARCHAIC CENTRAL LAWS USING ART. 254(2)

Constitutionally, the state governments cannot amend central laws on concurrent list (because in case of conflict, central law will prevail). However, if the centre agrees to give presidential assent to a state law, under Article 254(2), it's the state's law will prevail in that state. With the cooperation received from the union government, the Rajasthan government has decided to amend three archaic central laws – the Industrial Disputes Act, the Contract Labour Act and the Factories Act (which states like Kerala and West Bengal can't do by any stretch of imagination). Thus, Rajasthan has taken a lead in labour reform unleashing the full job potential in the State.

[VIII] CONSTRUCTIVE COMPETITION AMONG THE STATES TO REFORM THEIR ECONOMIES

The annual publication, since 2011, entitled 'Economic Freedom of the States of India' demonstrates that the States are pursuing economic development in their own ways and reaping the rewards accordingly. The inaugural report demonstrated that the States that have had a large fall in economic freedom indices⁶ do not have high growth, and the States that have had a large improvement in economic freedom index have had high growth (Debroy, Bhandari, & Aiyar, 2011). The report brings home the point that the states in a federal country like India are laboratories of democracy and harbinger of a nation-wide change. Since a nation is an aggregation of its regions, a healthy competition among the States can serve to improve the investment climate of the nation as a whole. Thus, the report demonstrates that the States can reform their economies without an active involvement of the national government and even launch a "race to the top". Such a constructive competition can eventually pave the way for interjurisdictional collaboration by inducing the States to explore innovative ways to build aggregate capabilities by structuring horizontal linkages with the other States.

[IX] PARTNERING ARRANGEMENTS TO IMPLEMENT VARIOUS SCHEMES, PROGRAMS AND SERVICE DELIVERY

PUBLIC-PRIVATE PARTNERSHIP (PPP)

Many States have initiated Public-Private Partnership (PPP) mechanism for infrastructure development. Some like Andhra Pradesh, Gujarat and Tamil Nadu have also developed the institutional framework for PPP projects. The Government of India is now formalizing the concept of PPP as the basic model to meet its policy objectives and to complement other public procurement and public service delivery means for infrastructure projects [e.g. railways, telecommunication, road and power], common resource

⁶ The authors measure economic freedom in the 20 biggest states on basis of three parameters: [a] Size of Government [b] Legal Structure and Security of Property Rights [c] Regulation of Credit, Labour and Business.

management, health care and education. Furthermore, in order to ensure transparency in public private partnership [PPP] projects, the Planning Commission has asked the Finance Minister to disclose project-wise, ministry-wise and sector-wise information about such ventures in the supplements to the budget proposals. To increase the effectiveness of the social sector schemes, the Government is also considering implementation of the social sector schemes by private corporations through Public Private Partnership.

PUBLIC-PRIVATE-PEOPLE PARTNERSHIP [PPPP]

In India, the concept of public-private-people partnership [PPPP] is also taking shape especially in the implementation of development projects. It is also being tried in agriculture and rural development. PPPP is a more collaborative approach in which all the stakeholders have a major role to play. The local communities themselves define their needs. The private sector delivers the services. The government facilitates the matching of a community's need with the appropriate service providers and creates an enabling environment for the implementation of the project.

(X) PLANNING COMMISSION REPLACED WITH NITI AAYOG

With the creation of NITI [National Institution for Transforming India (Figure 4)], in place of the Planning Commission, it is "hoped" that there will be a genuine and continuing partnership between the centre and the states and among the states. Participation of the states will make planning more inclusive. As per the policy statement of the government, NITI will create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and partners. It will offer a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda. In addition to being the incubator of ideas for development, the NITI Aayog will provide a critical directional and strategic input into the development process. It will develop mechanisms to formulate credible plans at the village levels.

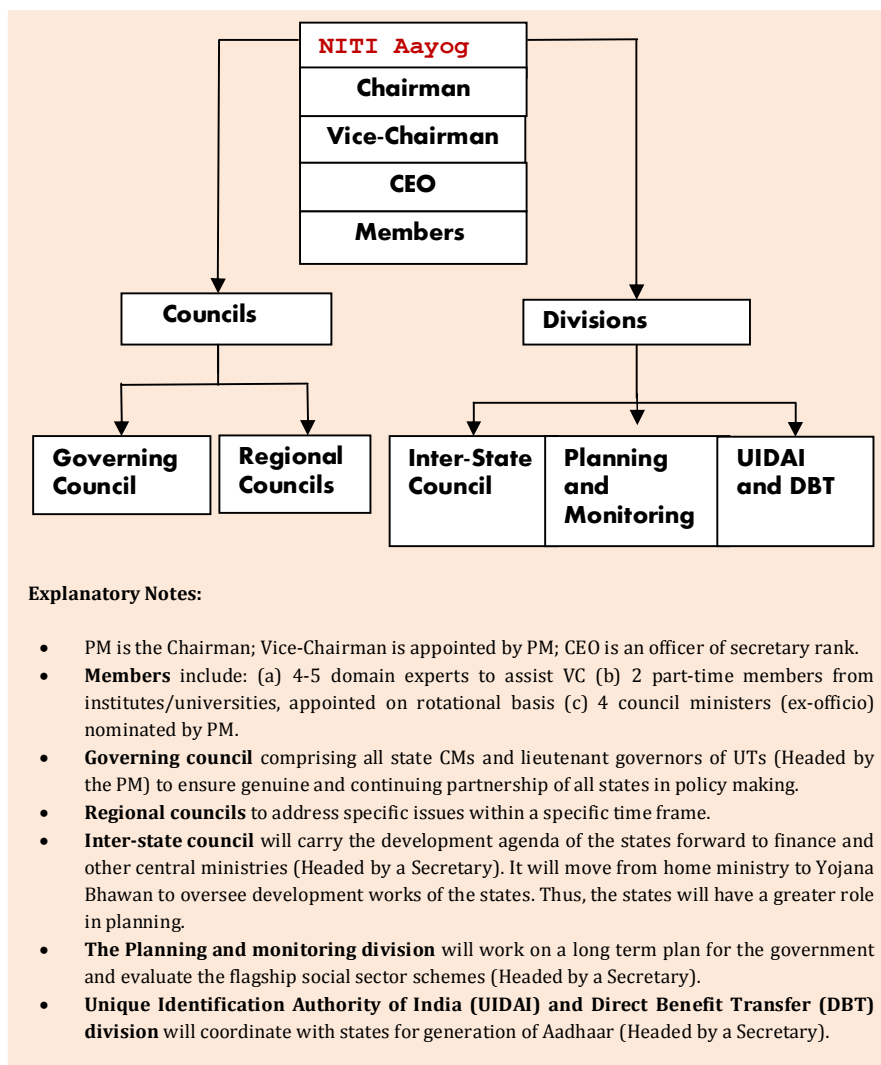
(xi) RECOMMENDATIONS OF THE FOURTEENTH FINANCE COMMISSION (2015-20)

The recommendations of the Fourteenth Finance Commission are aimed at providing significantly higher and genuine revenue autonomy to the states. The FC has increased the states' share in central taxes to 42% from the present 32% while at the same time it has suggested necessary institutional changes to minimize discretion. It also recommended Rs 2.87 lakh crore as grants to local bodies thereby granting them greater fiscal independence from the state governments.

The Commission has also done away with 'illogical and dysfunctional' distinction between Plan and Non-Plan which not only increased misallocation and distortion of government expenditure, but also trumped scholarly analyses of the costs and outlays that drew exclusively on Plan. The FFC has also

recommended a state-of-the-art indirect tax system (GST) from next fiscal, aiming to create a single tax for goods and services across the country.

Figure 4: Structure, Composition & Functions of NITI Aayog that replaced Planning Commission



VI. IDENTIFYING THE INSTRUMENTS OF COLLABORATIVE FEDERAL ARCHITECTURE: THE TASK AHEAD

Designing institutions to ensure collaborative governance is indeed a challenging task. However, given the inter-jurisdictional and profoundly local content of the contemporary policy reforms, the concept of collaborative federalism seems indispensable.

In this section we pick the thread from our discussion of the indicators of the government's preparedness and suggest that much more needs to be done to ensure 'genuine and sincere collaborative interactions among the stakeholders.' The four most important reforms that are imperative if the government really wants to strengthen federalism are detailed as below.

(A) DISMANTLE NDC AND TRANSFER THE ROLE OF NITI'S GENERAL COUNCIL TO THE INTER-STATE COUNCIL

With the abolition of the Planning Commission, the National Development Council (NDC) has also lost its relevance as the structure of the Governing Council of NITI almost serves the same purpose. However, at the functional level the latter is qualitatively different. Earlier, the role of the NDC was just to approve the five year plans as a matter of formality unlike now when the *Governing Council* includes States and Union Territories (UTs) as equal partners in the policy making process. However, being a non-statutory body, its recommendations are not binding.

Thus, one sensible option is to transfer the role of the General Council to the Inter-State Council. This will eliminate the risk of multiple bodies trying to achieve the same goal. In case this option is not acceptable to the NDA government, then the least that can be done is to make NITI a constitutional body and include in its General Council, inter alia, representatives of the local bodies, civil society, non-governmental organisations, and other stakeholders in not just a consultative sense but in a collaborative sense as well.

(B) TRANSFORM 'NITI AAYOG' INTO A STATUTORY BODY

Despite all that has been said and done, NITI Aayog still appears to have been conceived based on the dominant model of executive-cooperative federalism rather than on a collaborative-competitive/laboratory model. It should be noted that NITI Aayog has no “constitutional sanctity.” The decision to create NITI Aayog was not taken after a discussion in parliament; however, the entity’s framework was discussed in a meeting attended by all the chief ministers and chief secretaries on December 7, 2014. Further, if the “extra-constitutional” NITI eventually overshadows the Inter –State Council, it would have to face the charge of another government-decreed body, taking custody of the vital issues by subordinating a constitutional body.

Collaborative federal governance calls for a “*constitutional mechanism*” to engage state and non-state actors to prevent it from being marred by ad-hocism. Thus, a bold initiative is required to transform NITI into a statutory body; if this does not occur, it will be difficult to hold state/union/ministries/departments accountable for failing to achieve time-bound implementation of quantitative and qualitative targets.

(C) TRANSFORM THE FINANCE COMMISSION INTO A PERMANENT BODY AND TRANSFER ALL FINANCIAL ALLOCATION FUNCTIONS TO THE FINANCE COMMISSION (FC)

The Finance Commission (FC) is a constitutional body provided under Article 280, constituted quinquennially to review the financial needs of the state governments, and to recommend the required financial transfers from the central government. Thus, the financial allocation function of the FC has been sanctified by the Constitution, however, the Planning Commission appropriated this task to itself, thereby, restricting the FC to determining state-wise share of the divisible pool of central taxes (based on assessment of non-plan revenue expenditure needs of the states)⁷.

With the dismantling of the Planning Commission the financial allocation functions of the Planning Commission shall ideally be transferred to the Finance Commission (at present these have been transferred to the Ministry of Finance). This can be done if the FC is transformed into a permanent body (as it is in Australia). Such a move would improve coordination and state-level fiscal data collection. It would also enable the FC to carry out proper monitoring of policy implementations in states. As a permanent body the FC can make annual projections to allocate funds to the states instead of five-year projections.

(D) ENCOURAGE DISSEMINATION OF INFORMATION ABOUT SERVICE DELIVERY

Although the collaborative federal architecture can improve transparency and accountability, yet, ushering into such a new way of conducting intergovernmental interactions requires commitment to greater accountability and transparency in the first place. Throughout the executive-cooperative phase of Indian federalism the governments engaged citizens as a way to legitimize their bargaining position (bargaining federalism as described by Morris-Jones in 1964) rather than as a way to emphasize greater accountability to citizens.

In order to prepare for the new way of conducting intergovernmental interactions, the need is to develop a culture of transparency and accountability. One way to achieve this is to have in place such

⁷ In a welcome move however, the Fourteenth Finance Commission has taken into account “planned” revenue expenditure while assessing state-wise share of the divisible pool of central taxes.

mechanisms whereby the information on the performance of public services is disseminated to the stakeholders and public at large. This can be done by making it compulsory for the local governments to formulate, publish and disseminate Citizen's Charter to let people know the mandate of the concerned departments of local administration and how to seek a remedy. On the other hand, civil society organizations at the local level can produce 'Citizen's Report Card' to provide public agencies with systematic feedback on the quality and adequacy of public services from actual users. Both these mechanisms together can impart transparency to the conduct of local affairs and can go a long way in making 'village-level planning' (as envisaged by the NDA government) truly participative.

Reinikka and Jakob (2004) show that in Uganda, information dissemination strategy had a substantial impact in preventing leakage of funds away from purposes intended in public budgets. Keefer and Khemani (2005) note the success of civil society organisations in playing such a role which can generate and disseminate information about service delivery, with the specific purpose of verifying political promises. They can also mobilize voters to hold political agents accountable and encourage them to improve public service delivery.

(E) ESTABLISH INTER-STATE COUNCIL (ISC) AS AN INSTITUTION OF COLLABORATIVE FEDERALISM

The inter-state council is *the only* legitimate constitutional body (under Article 263) responsible for fostering cooperation and promoting engagement with the states. The formation of NITI could prove to be an imperfect instrument to achieve the perfectly desirable goal of collaborative federalism if it diverts attention from the fact that it is the ISC, a constitutional entity, which can provide the institutional backing to the vision of collaborative federalism in India.

Thus, the single most important reform that will assist in strengthening the collaborative federal architecture involves expanding the existing structural and functional horizons of the ISC, enabling it to function as a "*collaborative council*." The ISC shall be entrusted with decision-making responsibilities and tasks, such as policy research and investigation. To achieve this purpose, the council can collaborate or network with research institutions, civil society organizations, and NGOs across the country to receive *research inputs* to resolve issues concerning the states just as NITI Aayog will enter into such collaborations to receive inputs for performing its key role of formulating a vision for the development of the country.

A worthy goal could be to evolve mechanisms (made effective by using ICT tools) to intensify interactions with the local government bodies, civil society, the private sector, and other such agencies/institutions that are involved in the process of governing the federal order. In order to prevent

the ISC from becoming an instrument of political buck-passing, it is essential to strengthen the entity through (a) the development of a research cell and (b) quasi-judicial powers. This is discussed in more detail below.

[A] DEVELOPMENT OF A DATABASE AND A RESEARCH CELL TO ASSIST INTERGOVERNMENTAL INTERACTIONS

Establishing a non-partisan and permanent research cell can provide scientific/empirical inputs for collaborative transactions among the stakeholders. However, the problem is that data collection and analysis has the potential to elicit controversy. Secondly, the politicization of such a body is always possible. However, a strong demand for such data, analysis, and information can provide the government with the necessary incentive to establish a technical service or research cell for this purpose. Such a body will provide input functions (e.g., data and research inputs) as well as perform output functions (e.g., preparing unbiased reports on discussions and decisions taken). Finally, the feedback gained from the action taken on the decisions will allow the ISC (as a collaborative council) to offer crucial inputs for further improvements and adjustments (see Figure 1).

[B] QUASI-JUDICIAL POWERS TO THE ISC

The Second Administrative Reform Commission (2005-09) and the Commission on Centre-State Relations (2010) have recommended quasi-judicial status for the Inter-State Council with a power to enforce decisions and resolve conflicts in a speedy and efficient manner. Similar status may also be accorded to General Council, if the proposal of granting statutory status to the NITI Aayog finds favour with the Government. Indeed, such powers are required to make the Council's decisions legally binding and preventing the stakeholders from deviating. In addition, the decision to back out from the accords and agreements arrived at in the council should be made as costly as possible. The institution of Auditor General can also play an important role where financial transactions are involved. This is an important part of the collaborative architecture because the agreements represent the common purposes of all the stakeholders and principles to which they all agree. They include commitments to work together to achieve maximum welfare of the citizens.

CONCLUSION

In this paper we have reflected on the possibility of supplementing federal practice in India (known for being “federal in form and unitary in spirit”) with collaborative institutions and deliberative processes to achieve policy coordination. The contemporary political and economic scenario in India is not conducive to a centralized decision making process. Thus, the central government would better achieve policy goals by drawing all the stakeholders into more collaborative interactions. Otherwise, the union government’s unilateral policy pronouncements, given the escalating power and influence of the subnational and non-state actors, will only produce confusion and chaos.

In view of the exogenous and endogenous imperatives noted in this paper, a shift is required not only from a centrally managed cooperation to a more creative and constructive one (engaging the states as equal partners) but also, more fundamentally, from our traditional construct of federalism, working exclusively with governments — national and subnational —to a modern federal construct, giving due recognition to all the players relevant for governance. This includes local bodies and the various non-governmental actors.

In order to make the collaborative federalism work, more institutional reforms are required (as suggested in the previous section) to eliminate the possibility of manipulation by ad hoc political bargaining or by welfare-reducing strategic behaviour by the governments at different levels.

Further research is required to identify more precise mechanisms through which co-decision making among the stakeholders might be made self-enforcing, so that our federal system moves closer to a collaborative model rather than acquiring features consistent either with the centre-constraining federation (Souza, 2002) or with a demos constraining one (Stepan, 2001).

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